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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-third session

SUMMARY RECORD OF THE 19TH MEETING

Held at the Palais des Nations, Geneva,
on Monday, 19 August 1991, at 3 p.m.

Chairman: Mr. JOINET
later: Mr. TURK

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The meeting was called to order at 3.20 p.m.

OTHER BUSINESS

1. Mr. EIDE, speaking on a point of order, said that at the very time the Sub-Commission was meeting in Geneva, serious human rights violations were taking place elsewhere in the world; the Sub-Commission was duty-bound to examine the sitution as rapidly as possible. An uprising of the armed forces had occurred in Moscow. Perestroika and glasnost, which in recent years had been of such significance for the evolution of human rights, were under threat. He had recently been received in a very friendly way in Moscow by the representatives of the authorities in certain sectors, in conjunction with the study with which he had been entrusted on the Baltic Republics. However, he had been exceedingly disturbed by his discussions with representatives of the Ministry of the Interior and of the Ministry of Defence, and while he had been worrying over those differences within the Soviet political system, his worst fears had been confirmed.

2. The CHAIRMAN wondered whether it might not be appropriate at that point to take up consideration of agenda item 4, review of further developments. In view of the seriousness of the situation and despite the delay it would involve for the progress of work, he proposed spending 10 minutes on the issue in order to elicit some reactions.

3. Mr. DESPOUY said that he would be unable to take up the other agenda items until he had expressed his opinion on the recent events which constituted an absolute disaster.

4. Mr. ALFONSO MARTINEZ said that he assumed that Mr. Eide was inviting each member to reflect on what had just occurred. The Sub-Commission should revert to its agenda, after having simply taken note of the course of events, which was the wisest solution.

5. Mr. CHERNICHENKO expressed his deep concern about events in his country; he understood that all were legitimately preoccupied. However, in view of the scale of events it was preferable to wait and see which direction they would take. He reminded members that the Sub-Commission was not expected to react rapidly and thought that the exchange of views should stop at that point.

6. Mr. DESPOUY agreed that it was impossible to make a comprehensive assessment of the situation in the USSR, but he remained convinced that the Sub-Commission was duty-bound to react in view of the seriousness of the situation. Mr. Gorbachev's dismissal was a development about which it was impossible to remain silent. Accordingly, he protested against events in the USSR and expressed his deep concern and conviction of the need to remain vigilant.

7. Mr. EIDE urged the Sub-Commission to react immediately in the face of the dramatic turn of events. He read out a draft text which he submitted to the Sub-Commission.

8. Mr. ALFONSO MARTINEZ, speaking on a point of order, said that the debate was being conducted on matters not on the agenda and if the discussion were to continue, a formal decision was required.

9. The CHAIRMAN stressed the extreme complexity of the situation and wished to consult the officers, as soon as possible, as to the appropriate procedure.

10. Mr. TREAT agreed with Mr. Eide that events in the USSR would have serious consequences for human rights. However, he felt that the Sub-Commission should not act impetuously and that the officers should meet and submit proposals to the Sub-Commission.

11. Mrs. WARZAZI agreed that the situation was serious although she agreed with those who thought that the Sub-Commission could not express itself on a political issue. The situation bore no comparison to that of the previous year, when the Government of Canada might well have massacred indigenous populations. She considered that the Sub-Commission should show moderation and if there was any doubt as to how to proceed, it was always possible to consult the United Nations legal adviser.

12. Mrs. KSENTINI also though that it was premature to take up the issue. It was impossible to decide on the basis of shreds of information. Moreover, in her view there was no need to take into account the fact that a draft text had been read out, as the decision to consider the issue had not been taken.

13. Mr. GUISSE said that, as things stood, the Sub-Commission could not take a decision on the situation in the USSR, as it did not possess enough verified information on the subject to do so. It could revert to the issue later on if it deemed it appropriate.

14. Mr. EIDE endorsed Mr. Treat's proposal that the issue should first of all be considered by the officers. Further, he explained that the text he had read out was not a formal proposal but merely the statement of a personal opinion.

15. Mrs. ATTAH thought that the Sub-Commission should act very cautiously and refrain from discussing matters that, moreover, came within the domestic affairs of the USSR, at a time when it did not possess all the information on the exact situation there. In her view, it would be premature to adopt a draft resolution on the matter and she shared the views of Mrs. Warzazi and Mrs. Ksentini and endorsed the proposal made by Mr. Treat.

16. Mr. TIAN Jin also thought that it was premature to discuss, even for 10 minutes, an event in respect of which the Sub-Commission possessed so little information. It would be irresponsible for the Sub-Commission to take any decision whatsoever on the matter, and he suggested it should return to the debate on the agenda item under consideration.

17. Mr. TURK also thought that it would be inappropriate to begin an in-depth debate on recent events. Some concerns had been expressed. The officers should now consider the matter and give an opinion. For the time being, the Sub-Commission should take up issues under agenda item 18.

18. Mr. HELLER considered that the Sub-Commission could do no more than decide to consider the situation in the USSR in the light of recent events. However, it was for the Bureau to decide on the most appropriate way of doing so.

19. Mr. RIVAS POSADA did not fully understand what the officers were to do. He asked whether they should submit a proposal to the Sub-Commission for the amendment of its agenda or decide forthwith to amend it. Were they to consider Mr. Treat's proposal in the light of the amendment to the agenda already proposed by some members, or merely to study the procedural problem that arose before making recommendations to the Sub-Commission?

20. Mrs. WARZAZI pointed out that she had endorsed neither the motion submitted by Mr. Eide nor that of Mr. Treat.

21. Mr. ALFONSO MARTINEZ said that he took it that the only decision taken by the Sub-Commission was to ask the officers to study the motion submitted by Mr. Eide and then to recommend to the Sub-Commission whether or not the issue should be examined, and if so, how. It had not taken a decision on the merits of the question.

22. Mrs. DAES said that she shared Mr. Despouy's opinion and endorsed Mr. Treat's proposal to submit the issue to the officers. Furthermore, as the Sub-Commission's main task was to protect human rights, she would like the recommendations of the officers to be considered the following day.

23. The CHAIRMAN thought that Mr. Alfonso Martinez had summed up the situation perfectly well. Accordingly, he suggested that the officers should meet as quickly as possible to analyse the problem and to submit recommendations to the Sub-Commission on how to proceed. If there was no objection, he would take it that the Sub-Commission endorsed that proposal.

24. It was so decided.

PROTECTION OF MINORITIES (agenda item 18) (continued) (E/CN.4/Sub.2/1991/43; E/CN.4/1991/53 and Corr.1; E/CN.4/Sub.2/1990/46)

25. Mr. CHERNICHENKO thanked Mr. Eide for his highly instructive report (E/CN.4/Sub.2/1991/43) whose quality left little room for criticism. However, he would have like Mr. Eide to propose a definition, or to make a start on a definition of the concept of minority. That was no easy task, and he himself was aware of the problems inasmuch as he had participated in the work of the open-ended Working Group responsible for preparing the draft declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities. However, the debate had shown that such a definition was indispensable and that it was better to establish one as part of a study, even if it would have to be incorporated into a convention at a later stage. The members of the Working Group had considered the scope of the definition and had already agreed, for example, that it should not include indigenous populations. It was also preferable for the question of religious minorities to be examined separately, as it was far too complex. For instance, in the USSR, although Muslims were numerous, they were a minority, but it would nevertheless be difficult to include them among minorities. Race and language should be the principal criteria borne in mind. However, it was necessary to

avoid confusing ethnic and national minorities. Armenians and Azerbaijanis certainly did not regard themselves as minorities; they were important nationalities. Those examples all illustrated the overriding need for a legal definition of the concept of minority.

26. Another crucial issue addressed in paragraph 41 of Mr. Eide's report deserved some thought. It was the very difficult legal problem of the protection a Government could provide to the members of a group belonging to its own nationality who lived in another country in which they were subjected to persecution. It had been seen in practice that such protection existed, but that it was not equivalent to the diplomatic protection afforded by a State to its citizens when they were abroad. Consequently, he would like Mr. Eide to devote more attention to that issue in his next report.

27. Mrs. KSENTINI thanked Mr. Eide for his work. It had been especially difficult because the problem of minorities also had political connotations and the Working Group had not yet defined the concept of minority.

28. With regard to the Guidelines that constituted section B of Chapter I of the report (E/CN.4/Sub.2/1991/43), she approved the idea set out in Guideline 1 of linking the concept of discrimination to the Declaration on the Right to Development, and considered that the link should be maintained in the next study. Regarding Guideline 2 she asked for clarification of the meaning of the following sentence which appeared in paragraph 38: external self-determination "consists of a people determining its own status - deciding whether it should possess statehood by itself or be part of another State". She thought that such a concept was historically unfounded because where some people were concerned, exercising their right to self-determination meant restoring their sovereignty over a State, which, in their view, already existed, and denial of the principle of the right of peoples to self-determination was occasionally the very negation of the idea that there was such a thing as a State. Accordingly, she would like Mr. Eide to correct that mistake. Furthermore, she could not understand why he had stated that the right to self-determination was a subject of controversy. As far as she knew, there was no controversy over the right to external self-determination; it was a norm of jus cogens. Nor did she approve the use of the word "passive" in the following sentence in paragraph 41: "it will be difficult at times for outside Governments to remain silent and passive when a group belonging to its own nationality is subject to serious discrimination and persecution in a different country", which seemed to indicate that Mr. Eide accepted the idea that a Government could intervene. In that case, the question would be what means of intervention would be appropriate for it, an issue that fell within the highly controversial notion of humanitarian intervention. The same remarks applied to the end of paragraph 42, where it was stated that it was crucial for Governments "to find the appropriate formula ... minimizing the chances of external intervention which would destabilize the country", because if the analysis was taken to its logical conclusion, it could be argued that failure to respect the right of minorities could render foreign intervention legitimate, thus again bringing up the concept of the right to intervene.

29. The same question was again raised in connection with Guideline 3, and she wondered whether it was to be deduced from the last sentence of paragraph 46 that foreign intervention could be more consequential in the case

of minorities. She also supposed that when Mr. Eide stated in paragraph 47 that "international humanitarian law is very weak in regard to internal conflicts", he had in mind a certain type of humanitarian intervention that had not yet met with international acceptance. It should not be overlooked that the additional protocols to the Geneva Conventions allowed the international community and international organizations to concern themselves with domestic conflicts. It was thus important to distinguish between those humanitarian principles that had already been established and those that still had to be established and that were still controversial. As to whether regional peace was endangered by conflicts involving certain minorities (para. 50), she pointed out that one might wonder whether it was not geopolitical, economic or strategic interests rather than concern for the fate of a minority that on some occasions led a State to intervene in a conflict. It would perhaps be worthwhile to consider the issue from that angle. She would also like Mr. Eide to specify in which cases State intervention could be considered to be justified on humanitarian grounds (para. 51). She was at a loss to understand the meaning of the sentence "the best way to prevent external intervention is to find constructive domestic solutions based on consistent confidence-building efforts" in paragraph 52 and asked Mr. Eide to clarify his line of thought. She suggested that he might focus attention on the fact that tensions might lead to intervention, rather than on peaceful means whereby the threat of tension might be avoided.

30. As far as Guideline 4 was concerned, it would have been preferable if the expression "negative measures" had not been used in the title and if the emphasis had been placed rather on positive measures, including non-discrimination. Although she was able to endorse the remarks made in paragraphs 55 to 59, she thought that the last part of paragraph 59, which mentioned the classification of ethnic groups, should be developed. For example, stressing the cultural and linguistic rights of a minority group could lead to the group's marginalization.

31. The issue of the control of minorities over natural resources, which was addressed in paragraph 61, was also insufficiently developed, and as the Special Rapporteur then proceeded to take up the concept of territorial autonomy, it might be asked whether, in his view, such autonomy implied a right to manage natural resources. The concept of equitable resource sharing, which had rightly been stressed by the Minority Rights Group, should be developed. Lastly, paragraph 67 addressed the complex problem of the link between development projects and control over natural resources in a rather perfunctory manner. There were also grounds for questioning the justification for the concept of a voluntary accepted resettlement option and whether payment of effective compensation was sufficient justification for certain development projects. While it was possible to agree with Mr. Eide that it would probably go too far to give the populations concerned an effective veto, it was hardly possible to require them to demonstrate that the projects concerned would have serious negative consequences for them, as stated in the report. In her view, the onus of carrying out an impact survey should be upon the author of a project.

32. Mr. MAXIM said that the Special Rapporteur should be congratulated on submitting a realistic and balanced report on the complex and thorny problem of minorities. The problem had recently been the subject of lively debate by

jurists, political scientists, historians, sociologists, economists, etc, who had advanced interesting and varied, albeit occasionally surrealistic ideas. To his credit, the Special Rapporteur had shown clairvoyance and wisdom by basing his report on international law. As Mr. Khalifa had said, one should avoid making things more difficult than they already were.

33. As Mr. Guissé had emphasized, the Sub-Commission should increase its efforts to arrive at a definition of minorities, for the study to be comprehensive and applicable. Although minorities might, in general, appear to share a more or less identical situation, their problems actually varied from one region to another, so that it was difficult to come up with universal solutions for them. For that reason, he endorsed the remarks made by Mr. Khalifa about the desirable scope of the document under consideration.

34. At a more practical level, in view of the lack of the requisite international normative framework it hardly seemed possible to use the expression "the international rights of minorities", as the Special Rapporteur had done in paragraph 22. It would seem preferable to revert to the basic principles mentioned in paragraph 23. However, he fully agreed with Guideline 1, because non-discrimination and full participation of all individuals belonging to all groups were the prerequisites for asserting all of their internationally and nationally recognized rights. There could be no derogation from the principle of equality of rights or from effective equality, emphasized by Mr. Türk. With regard to paragraph 33, which addressed the issue of the basic limitations that applied to the majority as well as to minorities, it would be prudent to take into account the duty of loyalty to one's country, raised by Mrs. Daes, and which was enshrined in the Constitutions of several advanced democratic countries. It should also be pointed out that in addition to rights, the members of minority groups, like all other citizens, had obligations and responsibilities towards the society in which they lived.

35. In paragraph 38, in which Mr. Eide used inappropriate language that might give rise to vain hopes, another inopportune attempt was made to innovate. However, he shared the opinion expressed by the Special Rapporteur in Guideline 3 regarding the danger posed by ethnic conflict for regional as well as national security. Mr. Eide had rightly stressed the view expressed at the previous session by Mrs. Warzazi on the conditions on which the solution to the minority problem must be based, namely the political will of the State having minorities and above all the will of the various communities to live together in peace and harmony. In recent years there had been serious attempts at segregation when particular communities could no longer live together. The element of time alone was unfortunately not enough to solve all problems and was fraught with the danger of errors and relapses. The Special Rapporteur might therefore make specific reference in his report to the dangers that arose from that kind of separatist manifestation which was harmful to minorities and the majority alike.

36. Regarding Guideline 4, he supported special measures on behalf of certain minorities to allow them to enjoy all their rights and to become fully-fledged citizens. At a meeting of the Conference on Security and Cooperation in

Europe the previous October, the concept of privileges or special rights had come under criticism from several parliamentarians from democratic countries on the grounds that it could give rise to dissatisfaction among the majority, which would feel disadvantaged.

37. Turning to Guideline 5, the role of the development process in removing economic and social obstacles to cooperation and mutual respect, he was convinced that the considerations relating to the importance of economic, social and cultural rights were also valid for resolving the problems of minorities. Development was the only means of ensuring that all citizens were able to enjoy all rights, both economic, social and cultural as well as political and civil rights. At the previous session of the Commission on Human Rights, he had observed in respect of his own country, Romania, that the more its society developed, the more able it would be to solve its serious economic and social problems and the more capable it would be of improving the circumstances of all of its members, without distinction.

38. In conclusion, he was confident that the Special Rapporteur's final report would be even better than his preliminary report. However, to achieve that result, the Special Rapporteur would require the support of the Centre for Human Rights and of the States Members of the United Nations.

39. Mr. Türk took the Chair.

40. Mr. ILKAHANAF said that he was certain that with the support of non-governmental organizations, of Governments and of the Sub-Commission, the Special Rapporteur would be able to discharge his difficult task and submit a final report that would be even better than the document under consideration. In his report he would have to examine not only national experience regarding peaceful solutions to the problems of minorities, as requested by Sub-Commission resolution 1989/44, but also other measures that might be used if peaceful solutions proved impossible. As Mr. Türk had rightly stressed, the question of the rights of minorities had to be addressed constructively, but when dialogue was no longer possible and recognition of the problems of minorities met with a refusal, other measures had to be considered.

41. As the Special Rapporteur pointed out in paragraph 12, at the current stage it was neither necessary nor possible to start with a definition of minorities. He recalled that in his first year as a participant in the work of the Sub-Commission, a Canadian expert had proposed, in a study, several definitions, all of which had had some shortcomings. Nevertheless, that did not mean that Governments should be allowed to decide by themselves whether there were minorities on their territory and what was meant by a minority. As he had stated at the previous session and as Mrs. Warzazi had remarked at the current session, Mr. Eide's study should be extended to Africa. The Special Rapporteur would certainly find, in African capitals, interesting data on minorities, on the tribal system and on the multitude of ethnic groups in Africa, which would allow him not to confine himself to European and Asian minorities.

42. Nor did he think that religious minorities should be excluded from the study. In many countries minorities were only distinguished as such by their religion. It was possible to cite not only the Baha'i community in Iran and

the Ahmadiyah community in Pakistan, but also the problem of Northern Ireland. Moreover, article 27 of the International Covenant on Civil and Political Rights recognized the existence of ethnic, religious or linguistic minorities in certain States. Finally, the draft declaration on the rights of minorities took religious minorities into account.

43. In determining the wishes of minorities, it was inconceivable that a single set of rights could be suited to all situations and satisfy all expectations. The non-governmental organizations that defended minorities were right to insist on being consulted in that connection, and he paid tribute, in particular, to the Minority Rights Group, which had made a valuable contribution.

44. Mrs. BAUTISTA said that Mr. Eide should certainly be congratulated on his the very important work. It was a regrettable fact that minorities continued to be subjected to discrimination by Governments and by majority or dominant groups or communities, not only within one region or country, but also internationally. Mr. Eide's study focused on minorities in States or countries, and he had recognized that he required additional information in order to complete it. It was to be hoped that Governments and non-governmental organizations would cooperate in the study and that the Commission on Human Rights would authorize the Special Rapporteur to continue it in order to be able to produce recommendations. Having heard the helpful comments by Mr. van Boven, Mrs. Daes, Mr. Ilkahanaf, Mr. Khalifa, Mrs. Ksentini, Mr. Türk and Mrs. Warzazi, she said that the issue at hand was whether the Sub-Commission would succeed, that year or the following year, in identifying the problem, and still more important, in deciding on the measures that had to be taken in order to promote peaceful solutions to the problems of minorities and to allow them to exercise their basic rights. While everyone recognized that members of minorities should be entitled to equal treatment under the law and in the administration of justice and to respect for their rights, in particular the right of association and the right to freedom of expression, mentioned by Mr. Eide, those principles did not confer on them either a special status or the right to violate the law or the rights of others, or to disregard their obligations towards the communities to which they belonged. While preserving their culture, their religion and their customs, minorities should, like others respect the rule of law, be loyal to the Government and safeguard the security of the State. The recognition of minorities ought not to be used to destabilize Governments and create social chaos. However, although the Special Rapporteur himself and several other experts had on several occasions stated that minorities occasionally pursued destructive and destabilizing policies in many countries, it had to be recognized that Governments themselves frequently showed intolerance towards minorities instead of recognizing them and protecting them. Nevertheless, the value of cultural diversity had to be recognized by Governments.

45. The reason why her own country, the Philippines, had not provided the Special Rapporteur with the information requested was probably because it had been prevented from doing so by the recent natural disasters. The Philippine authorities currently had to resettle mountain tribes displaced by those disasters, as well as half a million homeless. Although there were 39 dialects in the Philippines, Pilipino, the national language, which had been instituted 50 years earlier was spoken throughout the country and taught

in schools together with English. Even though there were several minorities in the Philippines, there were no ethnic conflicts and the authorities had never deliberately undermined the integrity and cultural identity of those minorities. The few attempts that had been made to foment discrimination against minorities had failed, for various reasons, the first of which was religious tolerance, which was national policy in the Philippines, as was borne out by fact. Together with Roman Catholics and several other Christian communities, there were other religious minorities, the largest of which were the 4 million Muslims. The Constitution, ratified in 1987, clearly recognized the existence of those minorities and guaranteed protection for them, as well as guaranteeing their cultural identity and their rights in all spheres. Offices had been established for the cultural minorities in the country's south and north. Autonomous regions had been created and conflicts between electoral candidates in the regions had been settled by the Supreme Court. Members of cultural minorities handled political and economic affairs in the regions concerned. However, it was the national police - which, by virtue of the laws recently adopted by the Congress and approved by the President of the Republic was henceforth an exclusively civilian force - that was responsible for maintaining order, in cooperation with local bodies that comprised, in particular, members of minorities. It should be pointed out that in cases of abuse, members of the police forces and of the army could be prosecuted in the civilian courts. Furthermore, the Philippine Commission on Human Rights had to certify that police and army officials had not been involved in human rights violations before they could be promoted. Minorities in the Philippines could also appeal to the courts to press their claims to ancestral lands. They could also appeal to the Philippine Commission on Human Rights and to the courts and were entitled to free legal aid in civil and criminal matters.

46. In the economic sphere, ethnic handicrafts were encouraged, not only as a means of earning export income, but also of developing a sense of pride among the cultural minorities. There was a national language and dress, but cultural minorities were encouraged to speak their own language, to wear their own dress and to practise their own arts. Those facts demonstrated that in any country cooperation and dialogue between the Government, the majority and the minority groups were necessary and that it was preferable to promote the integration and development of minorities rather than to repress them. The 4 million Muslims in the Philippines were represented in the Senate, the lower chamber of Congress, judicial bodies, the armed forces, the police, etc. In conformity with the Constitution, minorities occupying land were consulted on its use. There was also a programme on behalf of landless persons, and persons who had to be evicted were relocated. The Philippine Commission on Human Rights ensured that those constitutional principles were complied with and the authorities strove to resettle displaced persons as close as possible to their place of origin. Lastly, after the recent volcanic eruption, mountain tribes had been the first to be resettled. In conclusion, she hoped that her country's experience with minorities would make a positive contribution to the debates in the Sub-Commission.

47. Mr. ALFONSO MARTINEZ said that contrary to his usual practice, he was taking the floor on agenda item 18 at the current session because, first of all, the problem of minorities needed to be closely monitored by the Sub-Commission and, secondly, because Mr. Eide's report, which was excellent

both in form and content, merited close attention. In view of the breadth and complexity of the problem, there was every reason to submit a second preliminary report to the Sub-Commission, and the idea of sending different questionnaires to Governments and to minority groups was a method worth adopting. Regarding the content of the report, in view of the remarks made earlier by Mr. Heller, he thought that although it was important to identify those problems that arose in certain countries on account of the presence of minorities, it should nevertheless not be forgotten that in other countries minorities lived peacefully with the rest of the population.

48. The choice of the six Guidelines reproduced at the beginning of the report was highly judicious, as was the decision not to give too clearcut a definition of the term "minority", as such a definition might, as was often the case in the United Nations, tie the hands of the Special Rapporteur. It was also gratifying that the purpose of the study was to look for peaceful and constructive solutions to problems in which minorities, for very obvious reasons, were involved.

49. Regarding Guideline 1, it was self-evident that the principle of non-discrimination among groups was the only way of preventing conflicts, and that prevention was better than cure. Guideline 2 was also of enormous importance because, as the Special Rapporteur pointed out in paragraph 37, a primary concern of Governments was to maintain the political independence and territorial integrity of their own State and to ensure that their sovereignty and integrity were respected. It was desirable to find means of marrying that obligation of States with peaceful coexistence among the different population groups in a country on the basis not only of economic development, but also of social and institutional development that respected individuals and their diversity.

50. He was nevertheless somewhat concerned by Guideline 3. First of all, he did not think that paragraph 47 of the report was properly formulated. Contrary to what was stated in that paragraph, international humanitarian law contained provisions, such as Protocol II relating to non-international conflicts, the 1977 Protocols, the four Geneva Conventions of 1949 and above all the so-called right "of initiative" of the International Committee of the Red Cross which made it possible to act in respect of internal conflicts. It was true that the Committee required the approval of the Governments of the countries concerned, but the experience of the last five years had shown that the right of initiative was an important factor in the implementation of international humanitarian law. Lastly and above all reference was made, in connection with that Guideline, to the possibility of so-called "humanitarian" intervention in countries in which conflicts involving minorities arose. However humanitarian the intervention might be, it was none the less an intervention, and the principle of non-intervention was a fundamental principle of _jus cogens_ and, contrary to what was stated in paragraph 51, intervention of that kind, even on humanitarian grounds, was in no way justified. The Charter gave an extremely precise definition of the circumstances in which it was possible to resort to force in international relations. In his view, the best way of preventing external intervention was not that advocated in paragraph 52, but rather by stressing its unlawful nature on all occasions.

51. Regarding Guideline 4, equal rights, the preservation of the dignity of members of a particular community and the adoption of special measures on behalf of a given community were indeed suitable ways of resolving the problem of minorities.

52. Turning to Guideline 5, he expressed the conviction that development did not always systematically bring the elimination of tension in its wake. However, he would not go so far as to share the view expressed in paragraph 63 that it "often tends to increase rather than decrease economic disparities by creating prosperity for some and deprivation for others", as that might ultimately lead to the Kafkaesque assertion that development caused more problems than it solved. In actual fact, the occurrence of such a phenomenon in certain countries was attributable to the institutionalization of an unequal division of the wealth of those countries.

53. As far as Guideline 6 was concerned, he believed that it was essential to ensure that measures favourable to minorities also respected the rights of majorities.

54. Mr. YIMER considered that Mr. Eide's report was at one and the same time an excellent achievement and a source of controversy. He himself had been among those who had stressed the need to define, at some point or other, the term "minority", because when all was said and done, it would be necessary to know what exactly was at issue. The opinion expressed by Mr. Eide in paragraph 12 was understandable, but UNESCO had rightly observed that "the questionnaire as it now stands leaves it to Governments to decide ... whether there are minorities in their countries or not." He also hoped that Mr. Eide would provide the bare outline of a definition. He actually did so as early as in paragraph 19, in which he said that his study would embrace "national, ethnic, religious, cultural and linguistic groups which in significant ways differ from the majority and are non-dominant in the societies in which they live".

55. Among the Guidelines, his attention was first of all drawn to Guideline 2 and particularly to the extremely pertinent content of paragraphs 40 and 41. In those paragraphs the Special Rapporteur emphasized that certain obligations were incumbent upon both States in which minorities lived, and upon other States which should refrain from any action likely to jeopardize the former; he also pointed out that there were groups which constituted a national minority in one country and that were a dominant group in another, but that such a situation should not be invoked by the country with the dominant group as a basis for intervening in the other's affairs by encouraging seccessionist movements or by direct intervention.

56. The danger posed by internal conflict at the national as well as the international level, security, addressed by Guideline 3, with the risks of intervention and counterintervention that it entailed were genuine, and Mr. Eide had rightly addressed the issue.

57. Guideline 6 was an important component of the study and it was all to the good to provide a reminder that the rights of minorities should not be protected to the detriment of the majority.

58. While he endorsed the first part of the report, the following part gave rise to a question: did some Governments not confuse minorities with indigenous peoples, as their replies to the questionnaire indicated? In actual fact, indigenous populations were not necessarily minorities, far from it. Mr. Eide had not drawn attention to that confusion in his report, but it was an issue that he would definitely have to clarify. On that basis, the Special Rapporteur should go ahead with renewed vigour with his study, which would be a major landmark in the study of human rights and in the establishment of standards in that sphere.

59. Mrs. ROUSSO-LENOIR (International Federation of Human Rights) drew the attention of the Sub-Commission to the precarious and disturbing situation of Tziganes in Eastern Europe, where incidents affecting both individuals and whole communities were on the increase. However, it was Romania that gave the greatest cause for concern. Since January 1990, the Tziganes, who formed 10 per cent of the population, had become the scapegoats for a society thrown into confusion by the sudden collapse of authoritarian systems which had artificially maintained its cohesion. That phenomenon was compounded by the fantasies and rumours transmitted from one generation to the next, which marginalized Tziganes, and by the consequences of the crisis. Unskilled workers, small-scale craftsmen and agricultural seasonal workers had been the first victims of the economic slump, and the serious unemployment and shortages in their ghettos also contributed to the rise in the level of petty crime. She mentioned the arson, pillaging and reprisals that affected Tzigane communities and went so far as to speak of pogroms.

60. As far as the country's institutions were concerned, as Mr. Voyame had reported, the media were fully authorized to expose the Tziganes to public condemnation. In towns and villages, the police was soon unable to cope and mayors were either passive or became accessories. At the level of the department, the authorities were slow to react and only did so when urged on by human rights bodies, such as the Ethnic Federation of Romanian Gypsies, and more generally by the concern shown by the international community about such issues.

61. It was true that at all levels the authorities had adopted an open approach to the mission of inquiry sent by the International Federation of Human Rights. It should also be mentioned that steps in the right direction, with which the Ethnic Federation of Gypsies should be associated, had been decided at the national level. It was to be hoped that, as Mr. Eide advocated in paragraph 46 of his report, a dialogue would develop between the parties to stop that evil spiral in its early stages. However, the highest authority, which had made only one official statement through the intermediary of the Minister of the Interior, should clearly indicate its political will not to tolerate the intolerable and to put a stop to the activities of the enemies of democracy who were only too pleased to foment intercommunal strife. An unequivocal stand was required, together with the requisite legislative, administrative and economic measures.

The meeting rose at 6.05 p.m.